UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RANGER AMERICAN ARMORED SERVICES, INC.
Employer,

and **Case No. 12-RD-269202**

EDWIN ROMÁN
Petitioner,

and

UNION DE PROFESIONALES DE LA SEGURIDAD PRIVADA
Y TRANSPORTE DE VALORES

Union

REPLY TO "PETITIONER'S REQUEST FOR REVIEW"

I. INTRODUCTION

After reading Petitioner's Request for Review we have opted to discuss only those facts relevant to the controversy at hand and not be dragged into the investment of time by paying attention to the lengthy inconsequential philosophical dissertation expounded by Petitioner in its motion.

As we hereinafter point out, Petitioner's opposition includes incorrect and more important FALSE assertions which we feel obliged to emphasize for the Board to consider.

II. ARGUMENT

Petitioner's basis for his request is the case Mountaire Farms, Inc. v. United Food and Commercial Workers Union, Local 27, Case No. 05-RD-256888. The Contract Bar Doctrine is under consideration in Mountaire Farms Inc. However, what Petitioner fails to point out is that the factual genesis upon which the argument was raised in Mountaire Farms, Inc. is totally distinguishable from the present case.

In the Mountaire Farms case, employee Oscar Cruz Sosa collected a petition from more than 30% of his fellow employees and filed it with the NLRB seeking an election. The United Food & Commercial Workers (UFCW) union responded by asserting that the election was barred by the contract bar, since the petition was filed in year two of a five -year agreement. However, the Director of NLRB Region 5 held that the compulsory dues clause in the contract was facially unlawful **because it lacked a mandatory 30-day grace period**, and therefore no contract bar

applied. The regional director then scheduled a mail-ballot election, which the UFCW union tried to delay several times.

In the present case the compulsory dues clause of the Collective Bargaining Agreement which is in full for through December 16, 2022 is completely legal. *See* Article II, Section (2) states:

> Section 2: As a condition of employment every employee who at the date of the signing of this Agreement is not a *bona fide* of the Union, must join the Union and/or pay the fee and charges that the Union establish **in the thirty first day after the signing** of this agreement and must continue being a member of the Union and/or pay the fees and charges that the Union establishes.

So, at the outset, the reason behind the contract bar argument in Mountaire Farms, Inc. and which permitted the challenge to the doctrine is totally absent in the case at bar. Petitioner's contention that the Board "at the very least should stay consideration of the instant matter" pending a decision in Mountaire Farms, Inc. is meritless because, regardless of any decision in that case, the CBA in the present case complies with the 30-day grace period requirement. Thus, the reasoning and conclusion in Mountaire Farms, Inc. is totally inapplicable to the present case.

Throughout its brief, petitioner on countless occasions attacks and conveniently belittles the purpose and reasoning behind the contract bar doctrine. The truth of the matter is, from its outset, the National Labor Relations Act's purpose was to foment industrial peace and to act as an instrument against labor disruptions. *See* 29 U.S.C. sec. 141. To such effect the Board was charged with broad discretion to fashion all remedies to effectuate the policies of the Act. The contract bar doctrine fashioned by the Board pursuant to its statutory mandate is strictly in tune with the Act's purpose.

Petitioner's self-serving conclusion expressed on page 10, ¶5, that: "experience shows" that after 5-year contracts there has not been an avalanche of decertification petitions during the "open" last two years means the contract bar doctrine is unnecessary is totally unfounded. An absolute opposite conclusion may be reached using the same premise expounded by petitioner. That is, given the contract bar, all disagreements between employees and Unions were necessarily worked out thus avoiding having to seek the use of any decertification petition and the usual disruption brought by its filing.

We now call the Board's attention to page 14 of Petitioner's motion that states the following:

> Mr. Roman filed his petition on November 18, 2020, less than a year after the Union and Ranger American executed their CBA. He and his fellow employees were unhappy with that contract and their union representative, and made a conscious choice to exercise their right to vote out the Union. If the Union succeeds in its argument that his petition is barred, Mr. Roman and his fellow employees will be subject to its representation for several additional years and be forced to pay dues

to a union they would otherwise oust, all because of an arbitrary and non-statutory three-year prohibition on decertification elections.

The aforementioned statement is totally and absolutely **FALSE**, more so, its fallaciousness is clearly known to petitioner. On March 31, 2020 Mr. Edwin Román, himself, filed petition 12-UD-258654, for the Board to authorize the removal of the obligation to pay dues. An election was held on July 8, 2020 and its results were certified. *See* Exhibit 1. The tally of ballots was 69-0 in favor of deauthorization of payment dues. So, to state in an attempt to bolster its reasoning that to prevent a decertification election to be held during the contract bar period would result in forcing the employees to pay unwarranted dues to the Union is a total and absolute misrepresentation and false statement to the Board. Raising such a coarse false statement, the petitioner defeats his own purpose which is to sustain the elimination of the contract bar doctrine.

Finally, Petitioner refers to the complexity of the insulated period and how it puts "unschooled" employees at a disadvantage *vis a vis* incumbent Unions and their experienced lawyers. Precisely, the reasoning behind enactment of the Act was to balance the playing field in the workplace between employees and employers whereby those "unschooled" employees are granted rights to promote activity to improve working conditions. In doing so, Union employees seek the help of prepared professionals to achieve their ends. It is not unlike any other endeavor whereby expert knowledge is required to reach a certain goal. In the case at hand, the collective bargaining agreement proposal was explained and submitted to Union members for ratification.

The fact that the employee-Union relation has allegedly turned sour does not justify ignoring the reasoning behind the contract bar doctrine and its purpose just because the employees are "unschooled" in labor relations matters. If that were the case, the entire CBA according to Petitioner could be held invalid because the employees were "unschooled" even prior to the bargaining of the contract as well as during the entire bargaining process. It is just another weak and unconvincing argument raised by Petitioner.

III. CONCLUSION

Pursuant to the aforementioned, facts present in the Mountaire Farms, Inc., 05-RD-256888, are totally distinguishable from the facts of the present case, thus making it inapplicable to the case at bar. The request for review is bereft of any reasonable argument upon which the demand to do away with the contract bar doctrine may be sustained.

Wherefor, it is respectfully submitted that the Board deny Petitioner's request for review.

Dated: January 22, 2021

Respectfully submitted,

/s/ Howard Pravda

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 22, 2021 a copy of the foregoing Reply to Petitioner's Request for Review was e-filed with the NLRB's Executive Secretary and sent by email to the following parties and counsels this 22nd day of January 2021:

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